

Message Text

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TAGS: MARR, TU

SUBJ: I.A. NEGOTIATIONS: PRIVATE MEETING U.S. AND TURKSIH

CHAIRMEN AIR TECH

REF: STATE 008003

1. DURING PRIVATE MEETING OF FOREIGN MINISTRY JANUARY 20, 1975, REQUESTED BY TURKISH CHAIRMAN ASULA TO DISCUSS VARIOUS MATTERS INCLUDING IA'S, RESPECTIVE GOT AND USG POSITIONS ON AIR TECH ISSUES OF THIRD COUNTRY FLIGHTS AND THIRD PARTY CLAIMS WERE REVIEWED.

2. U.S. CHAIRMAN GARDNER EXPLAINED WASHINGTON CONCLUSIONS AND RATIONALE REGARDING THIRD COUNTRY FLIGHTS AND THIRD PARTY CLAIMS, POINTING OUT THAT OUR INTERPRETATION HAS ALWAYS BEEN THAT ALL U.S. MILITARY PERSONNEL IN A RECEIVING STATE REGARDLESS OF MISSION WERE CONSIDERED COVERED BY THE NATO/SOFA UNLESS THEY ENJOYED OTHER STATUS SUCH AS DIPLOMATIC. GARDNER SAID, IF SATISFACTORY PROGRESS MADE ON OTHER OUTSTANDING AIR TECH ISSUES,

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U.S. MIGHT BE ABLE TO ACCEDE TO TURKISH REQUEST FOR REMOVAL OF

THIRD COUNTRY FLIGHTS FROM IA AND MAKING THEM SUBJECT OF SEPARATE EXCHANGE OF DIPLOMATIC NOTES. THESE NOTES, HOWEVER, COULD NOT CONTAIN LANGUAGE IN ANYWAY INDICATING THAT NATO/SOFA PROVISIONS DID NOT APPLY, GARDNER EXPLAINED. GARDNER NOTED THAT ACCORDING TO MERITS OF CASE USG COULD DECIDE TO PAY 100 PER CENT, IF A THIRD PARTY CLAIM AROSE FROM AN ACCIDENT DURING A FLIGHT TO THIRD COUNTRY, BUT COULD NOT COMMIT ITSELF TO DO SO IN ADVANCE. THE MOST WE COULD DO IN THIS RESPECT WAS TO INDICATE BY AN EXCHANGE OF NOTES THAT THIRD COUNTRY FLIGHTS WERE REGARDED BY THE U.S. AS FALLING WITHIN A SPECIAL CATEGORY OF ACTIVITIES.

3. TURKISH CHAIRMAN SUGGESTED THAT EXCHANGE OF NOTES ON THIRD COUNTRY FLIGHTS COULD STATE THAT SUCH FLIGHTS "WERE SUBJECT TO SPECIAL ARRANGEMENTS AND CONDITIONS" WITHOUT SPECIFYING WHAT WAS MEANT BUT WITH THE UNDERSTANDING THAT CLAIMS SETTLEMENT WOULD BE HANDLED ON A 100 PERCENT BASIS.

4. U.S. CHAIRMAN EMPHASIZED THAT IF CLAIMS MENTIONED IN IA OR IN EXCHANGE OF NOTES, U.S. WOULD BE REQUIRED TO CITE NATO/SOFA SETTLEMENT FORMULA AS FLOOR. TURKISH CHAIRMAN THEN REITERATED EARLIER SUGGESTIONS THAT SOME GENERAL LANGUAGE ON CLAIMS BE EMPLOYED, SUCH AS: "THE U.S. WILL TAKE INTO ACCOUNT THE NATO/SOFA AS THE MINIMUM BASIS OF SETTLEMENT OF THIRD PARTY CLAIMS RESULTING FROM ACCIDENTS INVOLVING U.S. AIRCRAFT FLYING TO THIRD COUNTRIES AND WILL TAKE INTO CONSIDERATION FURTHER REQUESTS FROM THE GOT FOR COMPENSATION." HE OPINED THAT IF USG FOUND FOREGOING UNACCEPTABLE SOME OTHER MEANS COULD BE FOUND, WHICH WOULD LEAVE CLAIMS ISSUE OPEN TO BE COVERED BY NATO/SOFA AS FLOOR AND "GENTLEMEN'S AGREEMENT" THAT USG WOULD FAVORABLY CONSIDER REQUESTS FOR 100 PERCENT COMPENSATION.

5. TURKISH CHAIRMAN ALSO PROPOSED THAT EMBASSY LEAVE CLAIMS ISSUE ON THIRD COUNTRY FLIGHTS OPEN BY CEASING TO SEND RECLAMA NOTES IN RESPONSE TO GOT NOTES APPROVING OVERFLIGHT REQUESTS FOR AIRCRAFT ENROUTE TO THIRD COUNTRIES. HE CLAIMED THAT U.S. RECLAMA NOTES WERE MAJOR FACTOR IN KEEPING CLAIMS ISSUE ALIVE FOR GOT AUTHORITIES. CURRENT LANGUAGE IN TURKISH APPROVAL NOTES IS: QUOTE RESPONSIBILITY BE UNDERTAKEN BY US. GOVERNMENT FOR COMPENSATION OF ANY POSSIBLE

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DAMAGES CAUSED IN CASE OF A CRASH OF THE SAID AIRCRAFT. UNQUOTE LANGUAGE OF U.S. RECLAMA NOTE IS: (AFTER QUOTATION OF FOREGOING TURKISH LANGUAGE): QUOTE AS THE MINISTRY IS AWARE, THE MATTER OF CLAIMS ARISING FROM ACCIDENTS OF U.S. MILITARY AIRCRAFT IN TURKEY HAS BEEN THE SUBJECT OF DISCUSSIONS BETWEEN THE EMBASSY AND THE MINISTRY. THE EMBASSY WISHES TO ADVISE THE MINISTRY THAT THE OVERFLIGHT (S) APPROVED BY THE MINISTRY'S NOTE NO.---- IS/ARE BEING CARRIED OUT WITHOUT PREJUDICE TO THE EMBASSY'S

POSITION IN THOSE DISCUSSION. UNQUOTE

6. U.S. CHAIRMAN NOTED THAT U.S. ACCEPTANCE OF GOT FLIGHT APPROVAL NOTES WITH PRESENTLY-USED CLAIMS LANGUAGE WITHOUT RECLAMA MIGHT OVER A PERIOD OF TIME, INDICATE USG ACCEPTANCE OF GOT POSITION AND COULD THUS SET A TROUBLESOME PRECEDENT. U.S. MIGHT THEREFORE BE OBLIGED TO COUNTER IMPLICATION THAT FLIGHTS TO THIRD COUNTRIES WERE EXCLUDED FROM NATO/SOFA COVERAGE.

7. TURKISH CHAIRMAN ARGUED AGAINST U.S. CITING OF NATO/SOFA REGARDING THIRD COUNTRY FLIGHTS AS INTRODUCTION OF COMPLICATING FACTOR. HE OPINED THAT U.S. SHOULD BE ABLE TO ACCEPT PRESENT TURKISH CLAIMS LANGUAGE (PARA 6. ABOVE) IN APPROVAL NOTES WITHOUT RECLAMA SINCE 100 PERCENT SETTLEMENT OBLIGATION NOT SPECIFICE. HE SAID TURKISH AUTHORITIES DID NOT QUESTION NATO/SOFA STATUS FOR U.S. AIR CREWS PARTICIPATING IN THIRD COUNTRY FLIGHTS. HE ALSO REITERATED ASSURANCES THAT TURKS HAD NO INTENTION OF STOPPING FLIGHTS TO THIRD COUNTRIES.

8. IN REVIEW OF REMAINING AIR TECH ISSUES, TURKISH CHAIRMAN FINALLY SUGGESTED THAT LANDING AND PARKING FEE ISSUE COULD BE RESOLVED BY INSERTION IN ARTICLE 8.5.(B) OF AIR TECH IA, LANGUAGE VERBATIM FROM ANNEX TO TAX RELIEF AGREEMENT PARAGRAPH 10.(F) WHICH SPECIFIES THAT: "RELIEF SHALL NOT BE ACCORDED FOR PAYMENTS FOR SERVICES ACTUALLY RENDERED BY TURKISH AUTHORITIES FOR THE AIRCRAFT IN QUESTION." (COMMENT: WE BELIEVE THIS SUGGESTION HAS POSSIBILITIES IF LANGUAGE FROM MAIN TEXT TAX RELIEF AGREEMENT CONCERNING THOSE EXEMPTIONS ALSO INCLUDED.)

9. TURKISH CHAIRMAN OPINED THAT ISSUE OF "APPROVED NATO PLANS" WOULD BE RESOLVABLE ONCE MAJOR AIR TECH ISSUES WERE CLEARED UP. (COMMENT: WE CONCUR IN THIS VIEW).

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10. COMMENT: BECAUSE U.S. THIRD COUNTRY FLIGHTS WOULD LIKELY BECOME PRIME TARGET OF OUR TURKISH CRITICS SHOULD POLITICAL CLIMATE DETERIORATE FURTHER, WE NOW RECOMMEND RENEWED EFFORTS TO RESOLVE AIR TECH ISSUES INDEPENDENT OF PROGRESS ON OTHER IA'S. WE BELIEVE, HOWEVER, THAT FURTHER PRIVATE EXPLORATION WITH ASULA SHOULD BE MADE BEFORE WE RESUME PLENARY DISCUSSIONS ON THIS IA. SOLE SOLUTION FOR CLAIMS ISSUE MAY BE TO OMIT REFERENCE TO THIRD PARTY CLAIMS IN EXCHANGE OF NOTES. WE WOULD APPRECIATE WASHINGTON IAG COMMENTS ON ASULA'S PROPOSALS, SPECIFICALLY AS REGARDS DROPPING OUR RECLAMA NOTES.
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